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| 09/926,686 | 12/03/2001 | Adriano Huber | 216597US2PCT | 9492 |
| 22850 7590 07/01/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314 | | | | |
| EXAMINER BAYAT, BRADLEY B | | | | |
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2 UNITED STATES PATENT AND TRADEMARK OFFICE
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5 BEFORE THE BOARD OF PATENT APPEALS
6 AND INTERFERENCES
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9 *Ex parte* ADRIANO HUBER and CLAUDIO CABANO
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12 Appeal 2008-0275
13 Application 09/926,686
14 Technology Center 3600
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17 Decided: June 27, 2008
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20 *Before* MURRIEL E. CRAWFORD, DAVID B. WALKER, and JOHN C.
21 KERINS, *Administrative Patent Judges*.

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23 CRAWFORD, *Administrative Patent Judge*.
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26 DECISION ON APPEAL
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29 STATEMENT OF CASE

30 Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection
of claims 1 to 22. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

31 Appellants invented a method for ordering and transmitting digital
32 media objects and a device suitable therefore (Specification 1).

Claim 1 under appeal reads as follows:

1. A method for ordering and transmitting digital media objects, comprising:
transmitting an object order for digital media objects that comprises at least one object identification by a mobile communications terminal over a mobile radio network to a center,
transmitting data on a time at which an ordered media object is available by the center to the communications terminal, wherein the time is determined by the center with regards to optimal usage of resources used for a transmission of ordered media objects and is stored in the communications terminal,
automatically contacting, by the communications terminal, the center at the time,
transmitting a media object assigned to the object identification by the center via a radio network to the communications terminal, where the media object is stored in a memory, and
playing back, by a media playback module of the communications terminal, a media content included in the stored media object.

The Examiner rejected claims 1 to 22 under 35 U.S.C. § 103(a) as being unpatentable over Downs in view of Zhao.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Downs US 6,226,618 B1 May 1, 2001

Zhao et al., *Bandwidth-Efficient Continuous Media Streaming Through Optimal Multiplexing* 13-22 (May 1999).

ANALYSIS

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellants and the Examiner. As a result of this review, we have reached the conclusion that the applied prior art does not establish the prima facie obviousness of the claimed subject matter. Therefore the rejections on appeal are not sustained. Our reasons follow.

The disagreement between the Appellants and the Examiner is with respect to whether Downs discloses a method including the steps of (1) transmitting an object order for digital media objects by a mobile communications terminal over a mobile radio network to a center; (2) storing the time at which an ordered media object is available in the communications terminal and (3) automatically contacting the center by the communications terminal at the stored time.

Regarding the transmission of digital media objects by a mobile communications terminal over a mobile radio network, the Examiner found that:

Transmission by a mobile communications terminal over a mobile radio network to a center is common to the cited references and therefore generic to the claims. Downs discloses utilizing the invention via any communication network via telephone or cable connection and Zhao includes use via PCs, TV set-top boxes and wireless handheld devices (see field of invention and introductory comments in Zhao).

(Answer 7).

1 The Examiner also directs our attention to Figures 1b, 1d, and 2 for
2 support for this step.

3 We do not agree with the Examiner. We find that Downs does not
4 disclose transmission over a mobile radio network to a center. Figures 1b,
5 1d, and 2 do not depict a mobile radio network.

6 In regard to the recitation that the time at which the ordered media
7 object is available by the center is stored in the communications terminal,
8 the Examiner directs our attention to various portions (col. 10, ll. 15 to 19;
9 col. 6, l. 35 to col. 8, l. 54; col. 40, ll. 53 to 67; col. 46, ll. 10 to 61) of the
10 Downs reference. We find that these portions of the Downs reference do
11 disclose that media has time-availability restrictions; however, these portions
12 do not disclose that the time restrictions are stored on a mobile
13 communications terminal. Rather, the time restrictions are stored at the
14 clearing house 105.

15 In regard to the recitation that the mobile communications terminal
16 automatically contacts the center at the time the media is available, the
17 Examiner references column 58, line 1 to column 59, line 60.

18 We find that although Downs discloses that the user can retrieve data
19 without assistance from an operator during a period of time, this portion of
20 Downs does not disclose that the mobile communication terminal
21 automatically contacts a center at a specific time.

22 On the record before us, Appellants have met the burden of
23 establishing that the Examiner erred in rejecting claims 1 to 22 under
24 35 U.S.C. § 103 as being unpatentable over Downs in view of Zhao.

The decision of the Examiner is reversed.

REVERSED

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